TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~107~~ 20

ELON G. PRATT AND ELIAS W. FOX, PLAINTIFFS IN ERROR,

vs.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 9, 1874.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Michigan, greeting:

Because in the record and proceedings, as also in the giving of judgment of a plea which is in the said circuit court before you, between Elon G. Pratt and Elias W. Fox, plaintiffs, and the Grand Trunk Railway Company of Canada, defendants, a manifest error hath happened, to the great damage of the said Elon G. Pratt and Elias W. Fox, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and fully and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right
2 and according to the laws and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief-Justice of the said Supreme Court, this eighth day of November, in the year of our Lord one thousand eight hundred and seventy-two.

ADDISON MANDELL,
Clerk of the Circuit Court of the United States for the Eastern District of Michigan.

Allowed by

JNO. W. LONGYEAR,
District Judge.

(Indorsed:) Supreme Court of the U. S. of America. Elon G. Pratt & al., plaintiffs in error, v. The Grand Trunk, defts. in error. Writ of error. Filed in clerk's office Mr. 8, 1872. A. Mandell, clerk. O. Kirchner, atty. for plff. in error.

3 THE UNITED STATES OF AMERICA:

To The Grand Trunk Railway Company of Canada, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Michigan, and in a suit where Elon G. Pratt and Elias W. Fox are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error related, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief-Justice of the said Supreme Court, this eighth day of November, in the year of our Lord one thousand eight hundred and seventy-two.

JNO. W. LONGYEAR,
District Judge.
OTTO KIRCHNER,
Atty. for Plff. in Error.

4 I do hereby accept service of the within citation, November 8th 1872.

E. W. MEDDAUGH,
Atty. for Deft., the Grand Trunk Railway Co'y of Canada.

(Indorsed:) The United States of America, Supreme Court. Elon G. Pratt & al., plff. in error, vs. The Grand Trunk. Citation; filed Nov. 8, '72, in clerk's office. A. Mandell, clerk. O. Kirchner, atty. for plffs. in error.

5 Supreme Court of the United States of America.

ELON G. PRATT AND ELIAS W. FOX, PLAINTIFFS in error,
vs.
GRAND TRUNK RAILWAY COMPANY OF CANADA, defendant in error.

The bond on citation is hereby waived.
Detroit, November 8th, 1872.

E. W. MEDDAUGH,
Atty. for Deft.

(Indorsed:) Supreme Court of the United States of America. Elon G. Pratt & al. vs. The Grand Trunk. Waiver of bond. Filed in clerk's office Nov. 8, 1872. A. Mandell, clerk.

6 Pleas before the judges of the circuit court of the United States for the sixth circuit and eastern district of Michigan, at the district court-room in the city of Detroit, of the term of June in the year of our Lord one thousand eight hundred and seventy-one, in the case wherein Elon G. Pratt and Elias W. Fox are plaintiffs, and the Grand Trunk Railway Company of Canada are defendants.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Be it remembered that on the second day of August, in the year one thousand eight hundred and seventy, a summons was issued from said court in the words and figures following, to wit:

Summons.

The President of the United States of America to the marshal of the eastern district of Michigan, greeting:

[SEAL.]

You are hereby commanded that you summon the Grand Trunk Railway Company of Canada, if they shall be found in your district, to be and appear in the circuit court of the United States of America
7 for the eastern district of Michigan, to be held at Detroit, in the said district, before the judges of the said court, on the fifth day of September next, to answer unto Elon G. Pratt and Elias W. Fox in a plea of trespass on the case in the sum of ten thousand dollars; and have you then and there this writ.

Witness the Hon. Samuel P. Chase, Chief-Justice of the Supreme Court of the United States, this second day of August, in the year of our

Lord one thousand eight hundred and seventy, and of our Independence the ninety-fifth.

ADDISON MANDELL, *Clerk.*

O. KIRCHNER,
Plffs' Atty.

Upon which said summons was indorsed acceptance of service thereof in the words and figures following, to wit:

I do hereby admit service of the within summons this 3d day of August, A. D. 1870.

E. W. MEDDAUGH,
Attorney for the Defendant within named.

Afterwards, to wit, on the 3d day of September, A. D. 1870, the said defendant, by E. W. Meddaugh, its attorney, came and filed with the clerk of said court a precipe in the words and figures following, to wit:

8 Circuit court of the United States for the eastern district of Michigan.

ELON G. PRATT & ELIAS W. FOX
vs.
THE GRAND TRUNK RAILWAY COMPANY of Canada.

You will please enter the appearance of the defendant in the above-entitled cause by me as his attorney.

Sept. 3, 1870.

Yours, &c.,

E. W. MEDDAUGH,
Atty. for Deft.

To ADDISON MANDELL, Esq.,
Clerk of said court.

(Indorsed:) Filed in clerk's office Sept. 3d. 1870. A. Mandell, clerk.

9 Afterward, to wit, on the sixteenth day of September, in the year of our Lord one thousand eight hundred and seventy, the said plaintiffs, by Otto Kirchner, their said attorney, came into court before the judges thereof and filed their declaration against the said defendant; which said declaration is in the words and figures following, to wit:

The circuit court of the United States for the eastern district of Michigan.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

As yet of the term in the year of our Lord 1870.

Elon G. Pratt and Elias W. Fox, partners in business under the firm-name of Pratt and Fox, who reside in the city of St. Louis, in the State of Missouri, and who are citizens of the State of Missouri, plaintiffs in this suit, complain of the Grand Trunk Railway Company of Canada, a body corporate and politic, doing business in the city of Detroit, in the

State of Michigan, in the eastern district thereof, and which is a citizen of the said State of Michigan, and has been heretofore duly summoned to answer the plaintiffs in a plea of trespass on the case.

For that whereas the defendant before and at the time of the
10 delivery of the goods and chattels to itself, as next hereinafter mentioned, was, and thence hitherto has been, and still is, a common carrier of goods and chattels for hire by railway, from the city of Montreal, in the Dominion of Canada, to the city of Detroit, in the State of Michigan, and from thence to the station nearest to the city of St. Louis aforesaid; and whereas, also, the plaintiff, whilst the defendant was such common carrier as aforesaid, heretofore, to wit, on the sixth day of September, A. D. 1865, caused to be delivered to the defendant, and the defendant as such common carrier then and there accepted of and from the plaintiffs, twenty-three casks, together with the horseshoe-nails contained therein, the property of the plaintiffs, of great value, to wit, of the value of ten thousand dollars, of lawful money of the United States of America, to be safely and securely carried and conveyed by railway by the said defendant, as such common carrier as aforesaid, from the city of Montreal aforesaid, to the nearest station to the city of St. Louis aforesaid, and then to be delivered to the plaintiffs or to their assigns, safely and securely, for certain reasonable reward to the defendant in that behalf; but the defendant, not regarding its duty as such common carrier as aforesaid, did not nor would safely or securely carry or convey the said casks and the nails contained therein aforesaid,
11 from the city of Montreal aforesaid, to the station nearest to the said city of Detroit, and from thence to St. Louis aforesaid, safely and securely deliver the same, or any part or parcel thereof, to the plaintiffs or their assigns; but on the contrary thereof, the said defendant, being such common carrier as aforesaid, so carelessly and negligently behaved and conducted itself in the premises that, by and through the carelessness and negligence and fault of the defendant in the premises, the said casks and the horse nails therein contained, being of the value of ten thousand dollars aforesaid, became and were wholly lost to the plaintiffs, to the great damage of the plaintiffs fifteen thousand dollars; and therefore they bring suit, &c.

And also for that whereas before and at the time of the delivery by the plaintiffs of the goods and property hereinafter mentioned to the defendant it was and for a long time had been a common carrier of goods by railway from the city of Montreal, in the Dominion of Canada, to the city of Detroit, in the State of Michigan, and the defendant, being such common carrier as aforesaid, did receive of and from the plaintiffs heretofore, to wit, on the sixth day of September, A. D. 1865, certain other goods and chattels, to wit, twenty-three casks, together with horseshoe-nails therein contained, of great value, to wit, of the value of ten thousand dollars, and marked respectively "P. & F., St. Louis, Mo., $\frac{78}{1009}$," to be by the said defendant transported by railway from the
12 said city of Montreal, in the Dominion of Canada, to the city of Detroit, in the State of Michigan, and then and there to be delivered by the said defendant to another carrier for further transportation to the city of St. Louis, in the State of Missouri, for certain reasonable reward to the defendant in that behalf. Yet the defendant, not regarding its duty as such common carrier as aforesaid, did not nor would safely or securely carry or convey the said casks and the horseshoe nails therein contained aforesaid from the city of Montreal aforesaid to the city of Detroit aforesaid, and there deliver the same safely and securely to another carrier for further transportation to the city

of St. Louis, in the State of Missouri; but, on the contrary thereof, the said defendants, being such common carrier as aforesaid, so carelessly and negligently conducted itself in the premises, that by and through the carelessness, negligence, and fault of the defendant in the premises the said casks and the horseshoe-nails contained therein, being of the value aforesaid, became and were wholly lost to the plaintiffs, to their great damage fifteen thousand dollars; and therefore they bring suit, &c.

And also for that whereas heretofore, to wit, on the sixth day of September, A. D. 1865, and for a long time prior thereto, the defendant was and now is a common carrier of goods along its line of
13 railway from the city of Montreal, in the Dominion of Canada, to the city of Detroit, in the State of Michigan; and the defendant has been during all the time before mentioned and now is along its said line of railway a carrier of goods to be shipped to points beyond its own line of railway, and in such cases received goods to be carried along its line of railway, and on the termination thereof delivered the same to another carrier for further transportation to their point of destination. And while the defendant was such common carrier as aforesaid, to wit, on the day and year last aforesaid, it received of and from the plaintiffs, at the city of Montreal, in the Dominion of Canada, as such common carrier, of the property of the plaintiff', twenty-three casks, marked respectively "P. & F., St. Louis, Mo., $\frac{78}{100}$," containing horseshoe-nails, of great value, to wit, of the value of ten thousand dollars, and destined to a point beyond the defendant's line of railway. And the defendant received such goods as such common carrier, to be by it safely and securely carried and conveyed as such common carrier along the line of its said railway, from the city of Montreal aforesaid to the city of Detroit aforesaid, and then to be delivered by the defendant safely and securely to another carrier for further carriage and transportation to the city of St. Louis aforesaid, that being the destination of
14 said goods and property, and there to be delivered to the plaintiffs or their assigns for a certain reasonable reward to the defendant in that behalf. Yet the defendant, not regarding its duty as such common carrier, did not safely and securely carry said casks and the horseshoe-nails contained in the same along its line of railway, from the city of Montreal aforesaid to said city of Detroit, and did not at the city of Detroit safely and securely deliver or cause to be delivered the said casks and the horseshoe-nails therein contained to another carrier for further conveyance to the city of St. Louis aforesaid, there to be delivered to the plaintiffs or their assigns, or any or either part or parcel thereof; but, on the contrary thereof, the said defendant, so being such common carrier as aforesaid, so carelessly and negligently behaved and conducted itself in the premises, that by and through the negligence, carelessness, and fault of the defendant in the premises, the said casks and the horseshoe-nails therein contained, being of the value *of* aforesaid, became and were wholly lost and destroyed to the plaintiffs, to their great damage fifteen thousand dollars; and therefore they bring suit, &c.

O. KIRCHNER, *Plff's Atty.*

(Endorsed:) Filed in clerk's office, Sept. 16, 1870. A. Mandell, clerk.

15 To which said declaration the said defendant, by said E. W. Meddaugh as its attorney, on the 31st day of January, in the year

one thousand eight hundred and seventy-one, filed in said court its plea in the words and figures following, to wit:

Plea.

ELON G. PRATT & ELIAS W. FOX
vs.
THE GRAND TRUNK RAILWAY COMPANY OF Canada.

In the circuit court of the United States for the eastern district of Michigan.

And the said defendant, by E. W. Meddaugh, its attorney, comes and defends the wrong and injury, when, etc., and says that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against it. And of this the said defendant puts itself upon the country.

E. W. MEDDAUGH,
Atty. for Deft.

JANUARY 31, 1871.

(Endorsed:) Filed in clerk's office, Jan'y 31, 1871. A. Mandell, clerk.

Afterwards, to wit, on the fifth day of May, A. D. 1871, the parties to said cause came into court and filed a stipulation as to the facts in the case in the words and figures following, to wit:

16 The circuit court of the United States for the eastern district of Michigan.

ELON G. PRATT AND ELIAS W. FOX
vs.
THE GRAND TRUNK RAILWAY COMPANY OF Canada.

It is hereby stipulated that for the purposes of this case the following shall be taken and admitted as facts, and that the whole of this stipulation and every part thereof may be read by either party to the same on the trial of this cause.

On behalf of the plaintiffs, defendant admits:

1st. That the goods described in the plaintiffs' declaration were their property, and were purchased by them, and on the 6th day of September, 1865, were delivered by their agents in Liverpool, England, to Allan Brothers & Co., for transportation, who gave to said agents a bill of lading therefor, of which the paper hereto annexed, marked "Exhibit A," is a duplicate copy.

2d. That said goods, by due course of business, arrived at the city of Montreal, in Canada, and were delivered to said defendant with
17 said duplicate copy of said bill of lading, by whom said goods were brought to the city of Detroit in the due course of defendant's business, on their way to St. Louis, in the State of Missouri, where, on the night of the 18th of October, 1865, they were destroyed by fire while in a freight-building belonging to the Michigan Central Railroad Company, and in a section thereof set apart for the use of defendant as

hereinafter mentioned, the defendant having no other depot for stowing its freight.

3d. That the value of said goods, at the time of said fire, was six thousand one hundred and twenty dollars, lawful money of the United States of America.

4th. That said defendant, at the time of receiving said goods at Montreal as aforesaid, was a common carrier of freight and passengers, and owned and operated a railroad from said city of Montreal to the city of Detroit, and as such common carrier was accustomed to receive and carry goods consigned to places beyond the termination of its own line.

5th. That there is a railway station at St. Louis, Missouri, which is the terminus of a railroad running from St. Louis to Chicago.

On behalf of the defendant the plaintiffs admit:

18 1st. That the rate of freight specified in said bill of lading covered the transportation of the goods from Liverpool to the city of Detroit, in the State of Michigan; that said Allan Brothers & Co. were at the date of said bill of lading, and still are, the owners of a line of ocean steamers running between Montreal, Canada, and Liverpool, England, and that said defendant then had and still has business and running arrangements with said Allan, Brothers & Co., by which each contracts for the transportation of goods by the other, destined to points on and beyond their respective lines, in a manner similar to said bill of lading. This custom or mode of doing business between said Allan, Brothers & Co. and said defendant has existed for more than ten (10) years last past. During all this period said defendant has been accustomed continuously to receive from said Allan, Brothers & Co. goods under such bills of lading, and to transport the same to different parts of Canada and the United States. The particulars of said running and business arrangement are as follows: Each receives goods consigned over the line of the other to points on as well as beyond their respective lines, and agrees as to the price of transportation over their respective lines, delivering to the consignors in each instance a bill

19 of lading similar to the one hereto attached. The goods are then carried by the party so receiving them to the place of connection with the other, to wit, Montreal, and there delivered to the other, with a duplicate copy of the bill of lading given, as was done in this case.

2d. That the fire by which said property was destroyed originated without the fault of the defendant, and that there is no negligence attributable to the defendant or its agents in connection with the destruction of said goods by said fire.

3d. At the time said fire occurred the defendant had no freight-room or depot at Detroit, except a single apartment in the freight-depot of the Michigan Central Railroad Company. Said depot was a building several hundred feet in length and some three or four hundred feet in width, and was all under one roof. It was divided into sections or apartments, without any partition-wall between them. There was a railway track in the centre of the building, upon which cars were run into the building to be loaded with freight. The only use which the defendant had of said section was for the deposit of all goods and property which came over its road or was delivered for shipment over it. This section, in common with the rest of the building, was under the control and supervision of the Michigan Central Railroad Company, as hereinafter

20 mentioned. The defendant employed in this section two men who checked freight which came into it. All freight which came into the section was handled exclusively by the employees of the

Michigan Central Railroad Company, for which, as well as for the use of said section, said defendant paid said company a fixed compensation per hundred-weight. Goods which came into the section from defendant's road, destined over the road of the Michigan Central Railroad Company, were, at the time of unloading from defendant's cars, deposited by said employees of the Michigan Central Railroad Company in a certain place in said section, from which they were loaded into the cars of said latter company by said employees when they were ready to receive them; and, after they were so placed, the defendant's employees did not further handle said goods. Whenever the agent of the Michigan Central Railroad Company would see any goods deposited in the section of said freight-building set apart for the use of the defendant destined over the line of said Central Railroad, he would call upon the agent of the defendant in said freight-building, and, from a way-bill exhibited to him by said agent, he would take a list of said goods, and would then also for the first time learn their ultimate place of
21 destination, together with the amount of freight-charges due thereon; that, from the information thus obtained from said way-bill in the hands of the defendant's agent, a way-bill would be made out by the Michigan Central Railroad Company for the transportation of said goods over its line of railway, and not before.

The goods in question were destined for transportation from Detroit to Chicago, on their way to Saint Louis, by way of the Michigan Central Railroad Company, which was the connecting carrier. The goods arrived at Detroit on the 17th day of October, 1865, and were on that day taken from the cars and deposited in the apartment of said building used as aforesaid by said defendant in the place assigned as aforesaid for goods so destined.

At the time the goods in question were forwarded from Montreal, in accordance with the usage in such cases, a way-bill was then made out in duplicate, on which was entered a list of said goods, the names of the consignees, the place to which the goods were consigned, and the amount of charges against them from Liverpool to Detroit. One of these way-bills *were* given to the conductor who had charge of the train containing the goods, and the other was forwarded to the agent of the defendant in Detroit. On arrival of the goods at Detroit, the conductor delivered his copy of said way-bill to the checking-clerk
22 of defendant in said section, from which said clerk checked said goods from the cars into said section. It was the practice of the Michigan Central Railroad Company, before forwarding such goods, to take from said way-bill in the custody of said checking-clerk, in the manner aforesaid, the place of destination and a list of said goods, and the amount of accumulated charges, and to collect the same, together with its own charges, of the connecting carrier.

These charges were paid to the defendant on a settlement with the Michigan Central Railroad Company at the end of each month. This way-bill and all papers of the Michigan Central Railroad Company relating to these goods were consumed by said fire.

4th. The defendant's charges against said goods at the time of the fire, including those of the carrier from Liverpool to Montreal, were $, which remain unpaid.

By the defendant on behalf of the plaintiff, rebutting:

1. That no notice was ever sent or given by the defendant to the Michigan Central Railroad Company of the arrival of said goods

23 and of their deposit in the section of said freight-building set apart for the use of the defendant.

O. KIRCHNER,
Atty. for Plff.
E. W. MEDDAUGH,
Atty. for Defendant.

(Endorsed:) Filed in clerk's office, May 5, 1871. A. Mandell, clerk.

24 *Through bill of lading.*

(Stamp: Sixpence. Vignette: Ship at sea.)

P. & F., St. Louis, Mo., 78-100.
Charges forward.....£2 7 8

Freight on 17,784 lbs., @ 102 | per 2,000....£45 7
Primage, 5 per cent, 7. 18. 3. 4.....£45 7 |
At now par of exchange.....£
Montreal harbor-dues, £
Total currency....£

R. U. S.

Care of Grand Trunk Railroad Company, Montreal, abroad.

Exhibit A.

Shipped, in good order, and well conditioned, by Allen Bros. & Co., in and upon the screw steamship called the Damascus, whereof is master for the present voyage Watts, or whoever else may go as master in the said ship, and now lying in the port of Liverpool, and bound for Quebec and Montreal, twenty-three casks horse-nails, being marked and numbered as in the margin, and are to be delivered, in the like good order and well conditioned, at the aforesaid port of Montreal, (the act of God, the Queen's enemies, pirates, restraint of princes and rulers, fire at sea or on shore, accidents from machinery, boilers, steam, or any other accidents of the seas, rivers, and steam navigation of whatever nature, kind soever excepted, with liberty, in the event of the said steamer putting back to Liverpool, or into any port, or otherwise being prevented from any cause from proceeding in the ordinary course of her voyage, to transship the goods by any other steamer belonging to or chartered by the Montreal Ocean Steamship Company, and with liberty to sail with or without pilots, and to tow and assist vessels in all situations, and to call at any port or ports to receive and land mails,) unto the Grand Trunk Railroad Company, and by them to be forwarded thence by railway to the station nearest to St. Louis, and at the aforesaid station delivered to Messrs. Pratt & Fox, or to their assigns. Freight and primage payable abroad, and Montreal harbor-dues for the same in cash on or before delivery, as per margin, with average accustomed.

In witness whereof the master or agents of the said ship hath affirmed to two bills of lading, all of this tenor and date; the one of which bills being accomplished, the rest to stand void.

Weight, contents, and value unknown, and not answerable for leakage, breakage, or rust. The owners of the vessel are not answerable for any discrepancy between the contents of the packages and the description of the same in the bill of lading; nor will they be accountable for gold, silver, bullion, specie, jewellery, precious stones or metals, paintings or statuary, unless bills of lading are signed therefor, and the value thereof therein expressed. No damage that can be insured against will be paid for, nor will any claim whatever be admitted unless the same is pointed out before the goods are removed. It is expressly agreed as the only conditions on which glass will be carried, that the steamers shall not be held liable for any breakage which may occur if the packages are delivered on the wharf externally in good order. Goods must be taken away within twenty-four hours after arrival at the railway station to which they are destined. In case the whole or any part of the goods specified herein be prevented by any cause from going in said steamer, the owners of the steamer are only bound to forward them by the succeeding steamer of this line. The ship is not an

swerable for damage arising through insufficiency in strength of packages. All freights payable in cash on or before delivery, without discount or abatement, at now par of exchange.

S. W. RAMEAGE.

Dated in Liverpool, 6 Sept., 1865.

25 Therefore to try the issue above joined let a jury come thereof by whom, &c., who neither, &c., because as well the said plaintiffs as the said defendant have put themselves on that jury.

And the jurors of that jury of whom mention is made, to wit: Darwin D. Buck, George Baker, Andrew Ladue, Oliver W. Lond, Harvey Haynes, Thomas Patee, Samuel C. Harris, Samuel R. Kingsley, George J. Lang, George Holden, William A. Henry, and Horace Gray, who were on the sixth day of July, A. D. 1871, elected, tried, and sworn to try the issue joined in this case, and, after hearing the arguments of counsel and receiving the charge of the court, say they find that the said defendant, the Grand Trunk Railway Company of Canada, is not guilty in manner and form as the said plaintiffs, Elon G. Pratt and Elias W. Fox, have in their declaration in this cause alleged.

It is therefore considered by the court here that said plaintiffs take nothing by their action against said defendant, and that said defendant go thereof without day; and that said defendant recover of said plaintiffs its costs and charges by said defendant about this suit in its defence laid out and expended to be taxed, &c.

26 United States circuit court, eastern district of Michigan.

ELON G. PRATT AND ELIAS W. FOX
vs.
THE GRAND TRUNK RAILWAY COMPANY OF CANADA.
} June term, 1871. To wit: June 6, 1871.

The case was tried by jury on the facts contained in the following stipulation, no other or further evidence being given or offered by either party.

(Here occurs the stipulation as to facts hereinbefore written, on page , &c. Also bill of lading, on page , &c.)

Charge to the jury.

LONGYEAR, J.

GENTLEMEN OF THE JURY: The facts in this case being agreed upon by the parties, and being certain and explicit in every particular, the questions presented for decision are wholly questions of law arising upon the facts so submitted, and as such are to be decided by the court.

27 Therefore, as the court shall find those questions of law, so will be your verdict.

The defendant was a common carrier of goods, wares, and merchandize, and of passengers. As such common carrier, its liability, without any special agreement to the contrary, was that of an insurer to the extent that in case of loss by fire at any time while such relation existed, the defendant would be liable to the owner, whether such loss was by its fault or otherwise.

It is settled law, however, that such liability may be limited, qualified, or entirely defeated by express agreement between the carrier and the consignor, or owner, and that such agreement may be evidenced by the

terms and stipulations contained in the bill of lading upon which the goods were received to be carried, although signed by the carrier only, the consignor's acceptance of the same without objection being deemed, in the absence of fraud, a sufficient assent to its terms to make them binding upon him.

It is also well settled that the liability of carrier is terminated
28 whenever the relation of carrier ceases; and that such relation may cease before the consignee or owner has actually received the goods, and even while they are still in the custody of the carrier; but at what particular stage of the transactions, or upon the doing of what particular acts by the carrier, such relation so ceases, the authorities in some respects are in hopeless conflict.

The question which first presents itself for our consideration is—

Did the stipulations and exceptions contained in the bill of lading attach to the carriage of the goods by the defendant over its railroad, or were they limited to the carriage by water alone, as contended? If they did attach, then there is an end of the case, and your verdict must be for the defendant, because those stipulations and exceptions contain an express exemption from liability for loss by fire. If, however, they did not attach, then the defendant must be held to have received and carried the goods under its common-law liability; in which case our investigations would, of course, take a more extended range.

The goods were shipped at Liverpool, in England, and were destined for St. Louis, in the State of Missouri. The routes by which they
29 were to be carried, and the mode and means of carriage, so far as expressed in the bill of lading, were from Liverpool to Quebec or Montreal, in Canada, by vessel, and thence by defendant's railway so far as it went in the direction of the destination of the goods, or, in the language of the bill of lading, "to the station nearest to St. Louis."

The bill of lading was given and executed by the vessel company, at Liverpool, and by it it is expressly agreed to deliver the goods at Quebec or Montreal to the defendant. If it stopped here there would be some difficulty, to say the least, in attaching the terms of the bill to defendant. But it does not stop here. It proceeds thus: "and by them" (the defendant) "to be forwarded thence" (from Quebec or Montreal) "by railway," &c., thus showing conclusively, I think, that the contract for carriage at least was intended to cover the whole route, that which was to be by rail as well as that by water. When we add to this the further facts appearing by the facts agreed on, that the freight stipulated in the bill of lading covers the entire route by rail as well as by water, and that the vessel company, by whom the said bill of lading was given, and the defendant had business and running arrange-
30 ments with each other of more than ten years' standing, by which each contractor for the transportation of goods by the other destined to points on and beyond their respective lines, "in a manner similar to said bill of lading"—thus showing that the agreement in the bill of lading made as aforesaid by the vessel company for carriage by the defendant was expressly authorized—I think the conclusion irresistible that every stipulation, exception, and exemption contained in the bill of lading, and which is applicable to carriage of goods by rail, was intended to attach to such carriage.

It is contended, however, that the exemption from loss by fire, as expressed in the bill of lading, is not applicable to carriage by rail, because the words used are "fire at sea or on shore," and that the words "on shore" must be construed according to their ordinary signification, and, being so construed, they are limited to the land next the water, or

where it meets the water, and so can be applied only to the point where the goods may be landed from the vessel, and not to the carriage of them over the land and away from the water.

This argument is ingenious, to say the least; but on examination it will be found to be exceedingly technical, and not to accord with that broad liberality of construction usually exercised in arriving at
31 the intention of parties to an agreement. As a general rule, the words of a contract are to be construed according to their common meaning—their meaning may, however, be extended or contracted—and it is the duty of the court so to construe them, whenever it is obvious from the connection in which they are used or from their relation to other words, or to the subject-matter, that they were used in such limited or extended sense in the agreement.

Mr. Parsons says, (2 Pars. on Contracts, 9,) "But words will be interpreted with unusual extent of meaning, and held to be generic rather than specific, and thus made to cover things which are collateral rather than identical, if the certain meaning of the parties and the obvious justice of the case require this extent of signification." Shaw, chief-justice, in Eaton vs. Smith, (20 Pick., 150,) makes use of the following language: "It is the province of the court to put a construction upon the written contracts and agreements of parties, according to the established use of language, as applied to the subject-matter, and modified by the whole instrument, or by the existing circumstances."

Here we have a contract for the carriage of goods, a part of the way by water and a part of the way by land. In this contract it is stip-
32 ulated that the carriers shall not be liable for loss by fire "at sea or on shore." "At sea" clearly relates to that portion of the service which is to be performed on the water. So, in view of the subject-matter and the circumstances named, the mind at once and inevitably refers "on shore" to that part of the service which was to be on the land. Technically, that water only is "the sea" where the tide ebbs and flows, and yet it would be preposterous to contend that the term as used in this bill of lading would not cover the case, and exempt the carrier from liability, if the goods had been lost by fire while on board, but after tide water had been passed, on their way up the St. Lawrence to Montreal. And if we go further and confine ourselves to the strict definitions of the lexicographers, the phrase "at sea" means simply "upon the ocean, away from land," in which sense the exemption from loss by fire would not cover any portion of the hundreds of miles of carriage upon the St. Lawrence River, which is clearly contrary to the intention of the parties as gathered from the whole contract.

From this analysis of the phrase "at sea" in the connection here used we gain much light as to the true meaning of the phrase "on shore," as used in the same connection. As "at sea" means "upon
33 the ocean," &c., and by its strict definition would not cover that part of the route which lay upon the river, so "on shore," by the strict definition of the lexicographers, means "the coast or land adjacent to a large body of water, as a sea or lake," and of course, strictly speaking, cannot be applied to the banks of a river.

Confining ourselves, therefore, to the strict definition of the terms used, and shutting our eyes to the connection in which they are used, we should be obliged to hold that the exemption would not cover a loss by fire anywhere upon the St. Lawrence River or upon its banks, which, looking at the context as we must always do in construing the words of a contract, is clearly not what was intended.

We see, then, that in order to apply the exemption to the whole of that portion of the route which was by water, and to which it is conceded it does apply, it is necessary to give to the expressions "at sea" and "on shore" a more extended meaning than what their strict definition when standing alone would warrant.

But, having thus been lifted out of and carried beyond the strict technical meaning of the words by their evident meaning and intention, as used in the contract, we cannot with propriety stop short of applying them to the entire contract under the sames rules of
34 construction. The contract, as we have seen, was one entire contract for carriage from Liverpool to Detroit. A part was to be performed upon the water and part upon the land. The contract contains an express exemption on the part of the carriers from liability for loss by fire "at sea or on shore." As we have seen, "at sea" was intended in this connection to cover any portion of the carriage which was to be performed on water. So I charge you that "on shore" must be construed to cover any and all of the carriage which was to be performed on land. It is so evident to my mind that the two phrases are here used in the sense above attributed to them that I give you this charge without a shadow of doubt of its correctness.

I charge you, therefore, that the bill of lading covers the carriage of the goods by the defendant on its railway; that by the bill of lading the defendant is exempted from liability for loss by fire; that, it being conceded that the goods in this case were lost by fire without any fraud or fault on the part of the defendant, the defendant is not liable in this case.

There are two other points which I think equally fatal to the plaintiffs' right of recovery.
35 One is that the defendant's contract had been fully performed, so as to release it from all further responsibility for the goods, before the fire occurred.

The duty of the defendant under the bill of lading was to carry the goods to Detroit, and there deliver them to a connecting carrier, to be forwarded. In this case the connecting carrier was the Michigan Central Railroad Company, and I think the facts agreed on show a full and complete delivery to it by the defendant in full performance of all its obligations to the plaintiffs.

The other point is that by the bill of lading under which these goods were carried it is expressly stipulated that "no damage that can be insured against will be paid for." The damage here sought to be recovered was clearly insurable against, and is therefore covered by the stipulation.

But, as the case is fully disposed of on the first proposition, I shall not detain you with any discussion of these two.

There being no questions of fact for your decision, and the questions of law having been found in favor of the defendant, your verdict must of course be accordingly.

Verdict for defendant.

36 THROUGH BILL OF LADING.

(Stamp: Sixpence. Vignette: Ship at sea.)

P. & F., St. Louis, Mo, 78-100.

Charges forward..... £2 7 8

Freight on 17,784 lbs., @ 102 |, per 2,000 lbs £45 7 0
Primage, 5 per cent .....

£45 7 stg.

7 18 3 4.
R. Bh.

At new par of exchange..... £ cy.
Montreal harbor-dues ..... £

Total currency ..... £

Care of Grand Trunk Railway Company, Montreal.
Abroad.

Shipped in good order and well conditioned, by Allen Bros. & Co., in and upon the screw steamship called the Damascus, whereof is master for the present voyage Watts, or whoever else may go as master in the said ship, and now lying in the port of Liverpool and bound for Quebec and Montreal, twenty-three casks horse-nails, being marked and numbered as in the margin; and are to be delivered, in the like good order and well conditioned, at the aforesaid port of Montreal, (the act of God, the Queen's enemies, pirates, restraint of princes and rulers, fire at sea or on shore; accidents from machinery, boilers, steam, or any other accidents of the seas, rivers, and steam navigation of whatever nature or kind soever excepted; with liberty, in the event of the said steamer putting back to Liverpool, or into any port, or otherwise being prevented, from any cause, from proceeding in the ordinary course of her voyage, to tranship the goods by any other steamer belonging to or chartered by the Montreal Ocean Steamship Company; and with liberty to sail with or without pilots, and to tow and assist vessels in all situations, and to call at any port or ports to receive and land mails,) unto the Grand Trunk Railroad Company, and by them to be forwarded thence by railway to the station nearest to St. Louis; and at the aforesaid station delivered to Messrs. Pratt & Fox, or to their assigns, freight and primage payable abroad, and Montreal harbour-dues for the same, in cash, on or before delivery, as per margin, with average accustomed.

In witness whereof the master or agents of the said ship hath affirmed to two bills of lading all of this tenor and date.

Weight, contents, and value unknown; and not answerable for leakage, breakage, or rust. The owners of the vessel are not answerable for any discrepancy between the contents of the packages and the description of the same in the bill of lading; nor will they be accountable for gold, silver, bullion, specie, jewelry, precious stones or metals, paintings or statuary, unless bills of lading are signed therefor, and the value thereof therein expressed. No damage that can be insured against will be paid for; nor will any claim whatever be admitted unless the same is pointed out before the goods are removed. It is expressly agreed, as the only condition on which glass will be carried, that the steamers shall not be held liable for any breakage which may occur if the packages are delivered on the wharf externally in good order. Goods must be taken away within twenty-four hours after arrival at the railway-station to which they are destined. In case the whole or any part of the goods specified herein be prevented by any cause from going in said steamer, the owners of the steamer are only bound to forward them by the succeeding steamer of this line. The ship is not answerable for damage arising through insufficiency in strength of packages. All freights payable in cash on or before delivery, without discount or abatement, at new par of exchange.

Dated at Liverpool, 6 Sept., 1865.

(Signed) M. W. RAMEAGE.

(Indorsed:) 4828. U. S. circuit court. Pratt & Fox vs. The Grand Trunk Railway Comp'y. Bill of lading, (copy.) O. Kirchner.

37 The circuit court of the United State' for the eastern district of Michigan.

ELON G. PRATT & ELIAS W. FOX
vs.
THE GRAND TRUNK RAILWAY COMPANY OF Canada.

Afterwards, to wit, at a session of the *the* circuit court of the United States for the eastern district of Michigan, on the sixth day of July, in the year one thousand eight hundred and seventy-one, before honorable John W. Longyear, district judge, appointed to hold the said circuit court according to the act of Congress in such case made and provided, the aforesaid issue joined, between the said parties as aforesaid, came on to be tried by a jury of the district aforesaid, for that purpose duly empanelled, good and lawful men of the said district. At which day came there as well the said plaintiffs as the said defendant by their respective attorneys aforesaid; and the jurors of the jury aforesaid, empanelled to try the said issue, being called, also came, and were then and there in due manner chosen and sworn to try the same issue;

38 and upon the trial of the issue the respective counsel for the plaintiffs and the defendant, to prove and maintain the said issue on their respective parts, did then and there offer in evidence and read to the said jury a stipulation signed by them respectively, and which was in the words and figures following, to wit:

"It is hereby stipulated that for the purposes of this case the following shall be taken and admitted as facts, and that the whole of this stipulation and every part thereof may be read by either party to the same on the trial of this cause."

On behalf of the plaintiffs defendant admits:

1st. That the goods described in the plaintiffs' declaration were their property and were purchased by them, and on the 6th day of September, 1865, were delivered by their agents in Liverpool, England, to Allan Brothers & Co. for transportation, who gave to said agents a bill of lading therefor, of which Exhibit A is a duplicate copy.

2nd. That said goods, by due course of business, arrived at the

39 city of Montreal, in Canada, and were delivered to said defendant, with said duplicate copy of said bill of lading, by whom said goods were brought to the city of Detroit in the due course of defendant's business, on their way to St. Louis, in the State of Missouri, where, on the night of the 18th of October, 1865, they were destroyed by fire while in a freight-building belonging to the Michigan Central Railroad Company, and in a section thereof set apart for the use of defendant, as hereinafter mentioned, the defendant having no other depot for storing its freight.

3rd. That the value of said goods at the time of said fire was six thousand one hundred and twenty dollars lawful money of the United States of America.

4th. That said defendant, at the time of receiving said goods at Montreal, as aforesaid, was a common carrier of freight and passengers, and owned and operated a railroad from said city of Montreal to the city of Detroit, and as such common carrier was accustomed to receive and carry goods consigned to places beyond the termination of its own line.

40 5th. That there is a railway station at St. Louis, Missouri, which is the terminus of a railroad running from St. Louis to Chicago.

On behalf of the defendant the plaintiffs admit:

1st. That the rate of freight specified in said bill of lading covered the transportation of the goods from Liverpool to the city of Detroit, in the State of Michigan; that said Allan Brothers & Co. were at the date of said bill of lading and still are the owners of a line of ocean steamers running between Montreal, Canada, and Liverpool, England, and that said defendant then had and still has business and running arrangements with said Allan Brothers & Co., by which each contracts for the transportation of goods by the other destined to points on and beyond their respective lines, in a manner similar to said bill of lading. This custom or mode of doing business between said Allan Brothers & Co. and said defendant has existed for more than ten (10) years last past. During all this period said defendant has been accustomed continually to re-
41 ceive from said Allan Brothers & Co. goods under such bills of lading and to transport the same to different parts of Canada and the United States. The particulars of said running and business arrangement are as follows: Each receives goods consigned over the line of the other to points on as well as beyond their respective lines, and agrees as to the price of transportation over their respective lines; delivering to the consignors in each instance a bill of lading similar to the one hereto attached. The goods are then carried by the party so receiving them to the place of connection with the other, to wit, Montreal, and there delivered to the other, with a duplicate copy of the bill of lading given, as was done in this case.

2nd. That the fire by which said property was destroyed originated without the fault of the defendant, and that there is no negligence attributable to the defendant or its agents in connection with the destruction of said goods by said fire.

3rd. At the time said fire occurred the defendant had no freight-
42 room or depot at Detroit, except a single apartment in the freight-depot of the Michigan Central Railroad Company; said depot was a building several hundred feet in length and some three or four hundred feet in width, and was all under one roof. It was divided into sections or apartments, without any partition wall between them. There was a railway track in the center of the building, upon which cars were run into the building to be loaded with freight. The only use which the defendant had of said section was for the deposit of all goods and property which came over its road or was delivered for shipment over it. This section, in common with the rest of the building, was under the control and supervision of the Michigan Central Railroad Company, as hereinafter mentioned. The defendant employed in this section two men, who checked freight which came into it. All freight which came into this section was handled exclusively by the employees of the Michigan Central Railroad Company, for which, as well as for the use of said section, said defendant paid said company a fixed compensation per
43 hundred-weight. Goods which came into this section from defendant's road, destined over the road of the Michigan Central Railroad Company, were at the time of unloading from defendant's cars deposited by said employees of the Michigan Central Railroad Company in a certain place in said section, from which they were loaded into the cars of said latter company by said employees when they were ready to receive them; and after they were so placed, the defendant's employees did not further handle said goods. Whenever the agent of the

Michigan Central Railroad Company would see any goods deposited in the section of said freight-building set apart for the use of the defendant, destined over the line of said Central Railroad, he would call upon the agent of the defendant in said freight-building, and from a way-bill exhibited to him by said agent, he would take a list of said goods, and would then also for the first time learn their ultimate place of destination, together with the amount of freight-charges due thereon; that from the information thus obtained from said way-bill in the hands of
44 the defendant's agent, a way-bill would be made out by the Michigan Central Railroad Company for the transportation of said goods over its line of railway, and not before.

The goods in question were destined for transportation from Detroit to Chicago on their way to St. Louis, by way of the Michigan Central Railroad Company, which was the connecting carrier. The goods arrived at Detroit on the 17th of October, 1865, and were on that day taken from the cars and deposited in the apartment of said building used as aforesaid by said defendant in the place assigned as aforesaid for goods so destined.

At the time the goods in question were forwarded from Montreal, in accordance with the usage in such cases, a way-bill was then made out in duplicate on which was entered a list of said goods, the names of consignees, the place to which the goods were consigned, and the amount of charges against them from Liverpool to Detroit. One of these way-bills was given to the conductor who had charge of the train con-
45 taining the goods, and the other was forwarded to the agent of the defendant at Detroit. On arrival of the goods at Detroit, the conductor delivered his copy of said way-bill to the checking-clerk of defendant in said section, from which said clerk checked said goods from the car into said section. It was the practice of the Michigan Central Railroad Company, before forwarding such goods, to take from said checking-clerk, in the manner aforesaid, the place of destination and a list of said goods and the amount of accumulated charges, and to collect the same, together with its own charges, of the connecting carrier.

These charges were paid to the defendant on a settlement with the Michigan Central Railroad Company at the end of each month. This way-bill and all papers of the Michigan Central Railroad Company relating to these goods were consumed by said fire.

4th. The defendant's charges against said goods at the time of the fire, including those of the carriers from Liverpool to Montreal, were , which remain unpaid.

46 By the defendant, on behalf of the *the* plaintiffs, rebutting:

1. That no notice was ever sent or given by the defendant to the Michigan Central Railroad Company of the arrival of said goods and of their deposit in the section of said freight-building set apart for the use of the defendant.

And there was no further or other evidence offered or given in said cause, and the plaintiffs and defendant did thereupon rest their case.

And the said judge did then and there declare and deliver his opinion to the jury aforesaid, that, upon the facts as stipulated, the plaintiffs were not entitled to recover, and that they must find for the defendant; to which said charge, so given to said jury, the plaintiffs did, by their counsel, then and there except.

And the said judge, under the charge and with the directions aforesaid, left the aforesaid issue, and the evidence so given on the trial thereof, as aforesaid, to said jury; and the jury aforesaid then and there

gave their verdict for the said defendant. And inasmuch as the
47 several matters so produced and given in evidence as aforesaid, and said exceptions, do not appear by the record of the verdict aforesaid, the said counsel for the said plaintiffs did then and there propose their aforesaid exceptions to the opinion of the said district judge, and requested him to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence as aforesaid, according to the act of Congress in such case made and provided. And thereupon the said judge, at the request of the said counsel for the plaintiffs, did put his seal to this bill of exceptions, pursuant to the aforesaid act in such case made and provided, on the fifth day of September, in the year of our Lord one thousand eight hundred and seventy-one.

JNO. W. LONGYEAR,
District Judge.

(Indorsed:) No. 4828. U. S. circuit court, eastern district of Michigan. Elon G. Pratt and Elias W. Fox vs. The Grand Trunk. Bill of exceptions. Filed in open court, Sept. 19th, 1871. A. Mandell, clerk. O. Kirchner, for plffs.; E. W. Meddaugh, for deft.

48 ELON G. PRATT AND ELIAS W. FOX, plff. in error, *vs.* THE GRAND TRUNK RAILWAY COMPANY OF Canada, deft. in error. } The Supreme Court of the United States of America.

The defendant in error waives all right to dismiss the writ of error for want of a return, and consents to the return being now made and the cause docketed.

Detroit, May 8, '74.

E. W. MEDDAUGH,
Atty. for Defendant.

(Indorsed:) U. S. Supreme Court. Elon G. Pratt et al. vs. The Grand Trunk. Stipulation.

49 UNITED STATES OF AMERICA:

Circuit court of the United States for the eastern district of Michigan.

ELON G. PRATT AND CHARLES W. FOX *vs.* THE GRAND TRUNK RAILWAY COMPANY OF Canada.

I, Addison Mandell, clerk of said court, do hereby certify the above and foregoing to be a true copy of the original record and proceedings in said court in the above-entitled cause; that I have carefully compared the same with such original, and certify the same to be a correct transcript therefrom, and of the whole of such original record and proceedings.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Detroit, this thirtieth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh.

[SEAL.] ADDISON MANDELL, *Clerk.*

Clerk's fees on writ of error & return, $13.40.

50 The Supreme Court of the United States of America.

ELON G. PRATT AND ELIAS W. FOX, PLAINTIFFS in error,
vs.
THE GRAND TRUNK RAILWAY COMPANY OF Canada, deft. in error.

Now here come the above-named plaintiffs in error, by Otto Kirchner, their attorney, and say that in the records, proceedings, and in the giving of judgment by the court below, there is manifest error in the following particulars, to wit:

For that the court charged the jury, that upon the facts as stipulated the plaintiffs were not to recover, and that they must find for the defendant.

And for these and other errors apparent in said judgment and proceedings aforesaid, plaintiffs in error pray that said judgment may be reversed, and that they may be restored to all things they have lost by reason thereof.

O. KIRCHNER,
Attorney for Plaintiffs in Error.

51 I do hereby accept service of the within assignment of errors, this eighth day of November, A. D. 1872.

E. W. MEDDAUGH,
Atty. for Defendant.

(Indorsed:) The Supreme Court of the United States of America. Elon G. Pratt et al., plffs. in error, vs. The Grand Trunk Railway Company of Canada, deft. in error. Assignment of error. Filed Novbr. 18, 1872, in clerk's office. A. Mandell, clk. O. Kirchner.

(Indorsement on cover:) No. 107. Elon G. Pratt & Elias W. Fox, plaintiffs in error, vs. The Grand Trunk Railway Company of Canada. E. Michigan C. C. U. S. Filed 9th October, 1874.

gave their verdict for the said defendant. And inasmuch as the
47 several matters so produced and given in evidence as aforesaid, and said exceptions, do not appear by the record of the verdict aforesaid, the said counsel for the said plaintiffs did then and there propose their aforesaid exceptions to the opinion of the said district judge, and requested him to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence as aforesaid, according to the act of Congress in such case made and provided. And thereupon the said judge, at the request of the said counsel for the plaintiffs, did put his seal to this bill of exceptions, pursuant to the aforesaid act in such case made and provided, on the fifth day of September, in the year of our Lord one thousand eight hundred and seventy-one.

JNO. W. LONGYEAR,
District Judge.

(Indorsed:) No. 4828. U. S. circuit court, eastern district of Michigan. Elon G. Pratt and Elias W. Fox vs. The Grand Trunk. Bill of exceptions. Filed in open court, Sept. 19th, 1871. A. Mandell, clerk. O. Kirchner, for plffs.; E. W. Meddaugh, for deft.

48 ELON G. PRATT AND ELIAS W. FOX, plff. in error, *vs.* THE GRAND TRUNK RAILWAY COMPANY OF Canada, deft. in error. } The Supreme Court of the United States of America.

The defendant in error waives all right to dismiss the writ of error for want of a return, and consents to the return being now made and the cause docketed.

Detroit, May 8, '74.

E. W. MEDDAUGH,
Atty. for Defendant.

(Indorsed:) U. S. Supreme Court. Elon G. Pratt et al. vs. The Grand Trunk. Stipulation.

49 UNITED STATES OF AMERICA:

Circuit court of the United States for the eastern district of Michigan.

ELON G. PRATT AND CHARLES W. FOX *vs.* THE GRAND TRUNK RAILWAY COMPANY OF Canada.

I, Addison Mandell, clerk of said court, do hereby certify the above and foregoing to be a true copy of the original record and proceedings in said court in the above-entitled cause; that I have carefully compared the same with such original, and certify the same to be a correct transcript therefrom, and of the whole of such original record and proceedings.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Detroit, this thirtieth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh.

[SEAL.] ADDISON MANDELL, *Clerk.*

Clerk's fees on writ of error & return, $13.40.

50 The Supreme Court of the United States of America.

ELON G. PRATT AND ELIAS W. FOX, PLAINTIFFS in error,
vs.
THE GRAND TRUNK RAILWAY COMPANY OF Canada, deft. in error.

Now here come the above-named plaintiffs in error, by Otto Kirchner, their attorney, and say that in the records, proceedings, and in the giving of judgment by the court below, there is manifest error in the following particulars, to wit:

For that the court charged the jury, that upon the facts as stipulated the plaintiffs were not to recover, and that they must find for the defendant.

And for these and other errors apparent in said judgment and proceedings aforesaid, plaintiffs in error pray that said judgment may be reversed, and that they may be restored to all things they have lost by reason thereof.

O. KIRCHNER,
Attorney for Plaintiffs in Error.

51 I do hereby accept service of the within assignment of errors, this eighth day of November, A. D. 1872.

E. W. MEDDAUGH,
Atty. for Defendant.

(Indorsed:) The Supreme Court of the United States of America. Elon G. Pratt et al., plffs. in error, vs. The Grand Trunk Railway Company of Canada, deft. in error. Assignment of error. Filed Novbr. 18, 1872, in clerk's office. A. Mandell, clk. O. Kirchner.

(Indorsement on cover:) No. 107. Elon G. Pratt & Elias W. Fox, plaintiffs in error, vs. The Grand Trunk Railway Company of Canada. E. Michigan C. C. U. S. Filed 9th October, 1874.

SUPREME COURT OF THE UNITED STATES.

ELON G. PRATT AND ELIAS W. FOX, PLAINTIFFS IN ERROR,

VS.

THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

Brief for Plaintiffs in Error.

The declaration is in case against the defendant as a common carrier, for the loss of goods which it had received for carriage.

It contains three counts:

I. Charges that defendant was a common carrier of goods from Montreal to St. Louis.

II. III. Charge in different ways that defendant was common carrier of the goods from Montreal to Detroit, and that upon their arrival at Detroit it was defendant's duty to deliver the goods to a connecting carrier for further transportation.

Statement of Facts.

The facts in the case are all agreed upon (Record, pp. 6–9).

The defendant-corporation is a common carrier of goods, and owned and operated a line of railway from Montreal to Detroit. In the course of defendant's business it was accustomed to carry goods consigned to places beyond the terminus of its own line of railway.

The goods in question were delivered at Liverpool, England, to Allan Brothers & Co. for transportation. Allan Brothers & Co. operated a line of steamships between Liverpool and Montreal, and they issued a bill of lading which is fully set out at page 9 of the record.

The goods were destroyed by fire while they were in a freight depot at Detroit, and in a section thereof set apart for the deposit of goods carried by defendant and destined for further transportation by the Michigan Central Railroad Company, which in this case was the connecting carrier.

The bill of lading contained a provision for exemption from liability for damage to the goods by fire "*at sea or on shore.*"

The court instructed the jury that upon the facts stipulated the verdict must be for the defendant (Record, p. 17).

This instruction is assigned as error (Record, p. 19).

The questions presented by the case are—

I. Whether the exemption from liability for damage by fire contained in the bill of lading extends to the carriage of the goods beyond Montreal.

II. Whether, in the absence of any showing that plaintiffs had any knowledge of, or in any way assented to this proviso for exemption, plaintiffs can be affected thereby.

III. Whether the defendant was a common carrier of the goods from Montreal to St. Louis, a point beyond its own route.

IV. Whether, in case the defendant should be held to have been a carrier of the goods from Montreal to Detroit only, the deposit of the goods in the warehouse, and before they had been actually received by

the connecting carrier, who had received no actual notice thereof and who had received no instructions with respect to the goods, would absolve the defendant from further liability.

I.

The goods were destroyed by fire in a freight depot at Detroit. It is claimed by defendant-corporation that it is exempt from all liability for damage by fire, by reason of the provisions contained in a bill of lading issued by Messrs. Allan Bros. & Co. It therefore becomes material at the outset to inquire into the terms of this bill of lading, and the effect thereof upon the liability of the defendant by reason of its subsequent reception of the goods for carriage

Allan Bros. & Co. at the time of issuing the bill of lading operated a line of ocean steamers between Montreal and Liverpool. Defendant had "business and running arrangements with Allan Bros. & Co., by which "each contracted for the transportation of goods by the other destined "to points on and beyond their respective lines, in manner similar to "said bill of lading." We take the purport of this stipulation to be that if the bill of lading in terms contained an agreement on the part of the defendant with respect to the carriage of these goods, the said Allan Bros. & Co. had authority to make such a contract for the defendant.

We submit that the bill of lading contained two distinct and separate undertakings:

(*a*) That of Allan Bros. & Co to safely and securely carry (subject to certain conditions and limitations), the goods by water from Liverpool to Montreal.

(*b*) That of the defendant to carry the goods from Montreal to the station nearest St. Louis, Mo., without any limitation whatsoever to its common law liability.

II.

(1). The exemption from liability for damage by fire is expressly confined to the voyage from Liverpool to Montreal. The bill of lading expressly and in terms stipulates for the safe delivery of the goods, "subject to damage by fire at sea or on shore," *at Montreal.* The duty of Allan Bros. & Co. with reference to these goods was entirely performed by their safe delivery to the defendant at Montreal. The stipulation for an exemption from liability for damage by fire related only to the contract of Allan Bros. & Co., and seems to exclude the idea that such exemption was to extend over the entire transit.

(2). That this interpretation of the bill of lading is the correct one seems manifest from other portions of it which must be read in connection with that above quoted. After an enumeration of causes of damage for which exemption from liability is claimed, the bill proceeds as fol-

lows: "or any other accident of the seas, rivers and steam navigation of whatever nature or kind soever." This, it is submitted, clearly indicates that the exemption from liability for damage provided for by this bill of lading was intended to cover only such damage as is incident to sea, river and steam navigation. It is submitted, that upon the principle *inclusio unius est exclusio alterius* the terms of this bill of lading negative any exemption from liability for damage by fire during the transit of the goods from Montreal to St. Louis.

(3). The bill of lading contains numerous provisos and limitations with respect to the liability of the carrier of the goods on their transit from Montreal to St. Louis; yet damage by fire is not even mentioned.

(4). The interpretation which we place upon this bill of lading is in accord with the spirit of British and American legislation, which, while it remits carriers by land to their common law liability, in express terms, exempts carriers by water from all liability to answer for damage done to goods happening without their negligence.

17 and 18 Vict., cap. 104, § 503.
Act of Congress, March 3, 1851.
Chitty on Carriers, p. 173.

It will be noticed that the proviso for exemption from liability by fire is in terms limited to such as may occur "at sea or on *shore*." The words "shore" and "sea" have a well-defined and settled meaning. "'*Shore*'=land on the side of the sea, lake or river. Strictly speaking, "where the water does not ebb or flow there is no shore."

Bouv. Law Dict., Tit. "Shore," (14th Edit.)

(5). It does not appear that the plaintiffs had knowledge of, or in anywise assented to, any limitations to the common law liability of the carrier. The plaintiffs cannot, therefore, in anywise be bound by it, even though it might otherwise be held to extend to the transit of the goods from Montreal to St. Louis.

R. R. Co. v. Mnfrs. Co., 16 Wall., 318.
Mensel v. R. R. Co., 1 Dill.
Baxter v. Wheeler, 49 N. H.

III.

(1). If it be true, as above claimed, that Allan Bros. & Co. were competent to contract for the defendant "in manner similar to said bill of lading," the said Allan Bros. & Co in stipulating for the transportation of the goods from Liverpool to Montreal, and for their delivery at Montreal to the defendant-corporation for carriage by the defendant to the nearest station to St. Louis, said Allan Bros. & Co., as the agents of the defendant, contracted for the carriage of these goods by the defendant as fully and effectually as if the defendant, by its principal officers or board of directors, had concluded the contract itself. The broad terms of the stipulation certainly justify us in making this claim. The stipulation provides that, by virtue of the arrangement existing between the defen-

dant and said Allan Bros. & Co., "each contracted for the other for the "transportation of goods destined to points on and beyond their respec- "tive lines."

(2). When the defendant received the goods for carriage from Allan Bros. & Co. it also received a copy of the bill of lading, and in so doing confirmed all that their agents, Allan Bros. & Co., had done in the premises. *We submit, therefore, that on receiving the goods at Montreal it was the defendant's duty to carry them clear through to St Louis.*

It is hardly necessary at this day to cite authorities to the point that an undertaking by a railway company to a point beyond its own line is not *ultra vires.* While American courts have generally held a carrier of goods liable only for such damages as occur on his own line and while they were awaiting delivery to a connecting carrier, it is no longer questioned that the carrier's liability extends to the ultimate destination of the goods, where there is a special undertaking to carry the goods beyond the terminus of his own line of railway.

Kruder v Woolcot, 1 Hill, 223.
Hunt v. E. R. R. Co., 1 Hill, 278.
Klyle v. Laurens R. R. Co., 10 Rich. S. C., 382.
Moore v. M. C. R. R. Co., 3 Mich., 23.
Hempstead v. N. Y. C. R. R., 28 Barb. 485.
Illinois Cent. v. Johnston, 34 Ill., 389.
Wend v. Saratoga, &c. R. R., 19 Wend., 534.
1 Gray, 502.
20 Ill., 375.
25 Geo., 231.
47 Me., 573.
24 N. Y., 269.

IV.

(1). But conceding, for the sake of argument, that the defendant was not a carrier of the goods from Montreal to St Louis, there can be no doubt, on the facts in the case, that it was the duty of the defendant to carry the goods from Montreal to Detroit, and there deliver the goods to the Michigan Central Railroad Company for further transportation and proper instructions, etc. Plaintiffs would therefore be entitled at all events to recover upon the second and third counts of their declaration, unless the court should determine as a matter of law that the goods in question had been delivered to the Michigan Central Railroad Co. with proper instructions. In whose custody were the goods? There is nothing to show that the Michigan Central Railroad Company had received these goods for carriage. In the absence of such a showing it must be assumed that the goods were still in the custody of the defendant.

7 N. H., 157.

The goods were burnt while in a section of a freight depot set apart for the use of the defendant. The stipulation shows that whenever goods had been so deposited they "were loaded into the cars of the Michigan Central Railroad Company whenever they (the

Michigan Central Railroad Company) were ready to receive them. The fact, therefore, that the goods had not yet been loaded, conclusively shows that the Michigan Central Railroad Company had not received these goods for carriage, and they were therefore in the custody of the defendant. The inability or refusal of the connecting carrier will not relieve the first or intermediate carrier from his common law liability.

Gould v. Chapin, 20 N. Y., 259.
Furrier v. Buffalo & State Line R. R. Co., 46 Barb., 103.
Meriam v. R. R. Co., 20 Conn., 362.
Redfield on Carriers, § 95.
R. R. Co. v. Schutz, 7 Mich., 518.

(2). There is nothing to show that any instructions were given to the Michigan Central Railroad Company with reference to the carriage of these goods; or that they had notice that the goods were in the depot waiting transportation by them; nor, as is usual in such cases, that they had been furnished with a copy of the bill of lading or with the original.

The judgment should be reversed with costs.

O. KIRCHNER,
Attorney General.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1877.

ELON G. PRATT AND ELIAS W. FOX,
Plaintiffs in Error,

V.

THE GRAND TRUNK RAILWAY CO. OF CANADA.

In Error to the Circuit Court of the United States for the Eastern District of Michigan.

BRIEF AND ARGUMENT OF I. P. CHRISTIANCY FOR DEFENDANT IN ERROR.

LANSING, MICH.:
W. S. GEORGE & CO., PRINTERS AND BINDERS.
1877.

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This is not a case which requires or properly admits the citation or analysis of a great number of decided cases.

When the case itself, as the facts are agreed upon, is fully understood, it will be seen that its proper decision depends upon a few elementary principles, and that the conclusions come of themselves.

The court below charged the jury:

1st. That here was a good delivery of the goods by the defendant to the Central Company before the fire, and that, therefore, the plaintiffs could not recover.

2d. He also charged that the exemptions stipulated for in the bill of lading, relieved the defendant from the loss by fire, if the property had not been delivered to the other company.

It is manifest that only one of these propositions was necessary to a decision in favor of the defendant; and if the judge was correct upon either, the judgment must be affirmed.

I.

THE GRAND TRUNK R. R. COMPANY HAD DULY DELIVERED THE GOODS TO THE MICHIGAN CENTRAL R. R. COMPANY, AND THEY WERE IN THE CUSTODY AND CONTROL, AND AT THE RISK, OF THE LATTER COMPANY BEFORE THE FIRE OCCURRED.

By the arrangement between these two companies and their usual established mode of doing business under it, there was nothing left to be done by the Grand Trunk Company to give the entire custody and control of the goods to the other company, with the right to load them upon its own cars, and put them in *itinere* over its own road, whenever, in the convenient transaction of its own business, it should choose to do so; and the Grand Trunk Company retained no right or power to determine when or how they should be thus loaded or their further transportation commence or terminate.

All that remained to be done with the goods was to be done by the Central Company or its employés, and on account of that company. The entire depot was that of the Central Company, the defendants having the qualified use of one section or part of it, as stated in the case. (See 3d admission by plt'ff, pp. 7 and 8 of Record.)

Now this language, when applied to the subject matter, does not indicate that the defendant had the entire and exclusive

use of any part of this section. Except as to the mere handling of freight, the use was doubtless exclusive so far as related at particular times to goods brought and deposited there for shipment over its own road, and goods consigned to Detroit waiting delivery there. If not exclusive, by the company receiving the goods from the other for transportation, it was doubtless a mutual use and for the mutual benefit of both, as to all goods brought by either road, destined for shipment over the other, while said goods were being unloaded and handled in moving them to the particular locality, whence they were to be loaded onto the cars for further transportation. And, after so placed in that particular locality, whence they were to be so loaded on the cars for further transportation, that particular locality, while the goods so remained there awaiting cars, was, for the time being, in the exclusive use and occupation of the company on whose cars they were to be loaded. But the entire section, as well as the rest of the depot, for obvious reasons, continued under the control and supervision of the Central Company; and for like obvious reasons that company reserved and exercised the exclusive right of handling all the freight that came into the section; for which handling, so far as it was done for the defendant, and the qualified use already mentioned, the defendant paid a fixed compensation per hundred weight. Now it does not appear from this that the defendant paid the cost of all handling of goods which took place in that section; nor is there the slightest probability that such was the fact; because much of that handling was as much for the benefit of the Central Company as for that of the Grand Trunk. The unloading of goods from the Grand Trunk cars into the depot, as well as the loading goods onto the same cars, was on account of and for the benefit of the Grand Trunk Company. So, on the other hand, the unloading into the depot, from the Central cars, of goods to be transported over the Grand Trunk, and the loading of its own cars with goods brought by the Grand Trunk for transportation,

was wholly on account, and for the benefit of the Central Company; while the handling of the goods after they were unloaded into the depot, in removing them to the particular locality in the section whence they were to be loaded onto the cars of the other for transportation, if not exclusively on account and for the benefit of the company receiving them for transportation, must at least have been for the mutual benefit of both. What I have said of the handling and expense of handling, and on whose account, or at whose expense it was done, is all equally applicable to the use of the section, or its various parts, by and for whom it was used, and for what portions of it compensation was given, and I need not repeat the argument in full. The result of the whole arrangement was in effect, that the section generally was used by the two companies in common, each having at times the exclusive use of a particular part; but the defendant company never having any use or control of that particular portion devoted to the goods destined for shipment over the Central road, at least while occupied by any goods placed there for that purpose.

Now, as a general rule, certainly, railroads receiving freight from customers bringing the goods, are ready enough to receive the goods unloaded, and even to help unload them, at the door or platform of their depot, and to remove them themselves, at their own expense, to the particular locality in their depot whence they intend to load them upon their cars. And so, I must suppose, it is when one railroad brings freight to another and unloads it in their depot at a place assigned. If they will not help unload, they are not, I think, in the habit of charging other roads for the privilege of bringing them business. Hence, I conclude it is highly probable, at least, that no part of the compensation per hundred was paid for the handling of this freight or any other freight brought by the defendant to the Central Company, except the unloading from the cars into the section, and that all the subsequent handling was on account and for the bene-

fit of the Central Company, and that no part of the compensation per hundred was paid for this handling by the employés of the Central Company.

But if any part of the expense was included in the charge per hundred for handling after the property was unloaded and before it reached the particular locality in the depot devoted specially to property brought by defendant for transportation over the Central road, it was probably but a small part. It was all done by the employés of the Central Company under the control and direction of that company. And after the property had been, by the employés of the Central Company acting under its control, thus finally placed in that particular place in the section for transportation, it is, I think, entirely clear, and will be rendered obvious before I conclude, that all handling of the goods which yet remained to be done consisted in loading the goods on to the Central Company's cars for transportation over its own road; and that this was to be wholly for and on account of that company. This would certainly have been the case if the freight had been brought to the company by any other parties; and no good reason can be given why it was not to be so here.

It was the business of the Central Company—of each company—to load its own cars.

These goods, previous to the fire, had been brought in by the G. T. Company, unloaded, checked off, and taken to and placed in that particular part of the section specially devoted to goods brought by the defendant for transportation over the Central road. (Case, p. 8, 2d paragraph.) And though it be admitted that the G. T. Company would have been liable for the loss, if the goods had been in any other part of the section when the fire occurred, I submit that here was a completed delivery; that it was in that precise locality in the section specially devoted to goods for shipment over the Central road; that this particular locality, as to these goods at least, and while so occupied was clearly in the occupation and use of the

Central Company; that the use for this purpose was clearly its own use, and that the goods were completely in its custody and control, to be loaded on its own cars and transported in the ordinary manner, and as their own convenience and their own rights and duties, under the circumstances, might dictate.

But it is objected that the delivery was not complete, because, as the case states, "no notice was ever given by the defendant to the Michigan Central R. R. Company of the arrival of said goods, and of their deposit in the section of said freight building set apart for the use of the defendant." There is nothing in the case, as I submit I have already shown, which shows or tends to show that the particular locality where these goods were placed, destined for transportation over the Central road, was "set apart for the use of the defendant," at least when so occupied by such goods, but *while so occupied*, at least, it was for the use and in the use of the Central Company. But aside from this, and admitting for the purpose of the argument, that the intention was to state that no notice had been given of the arrival or deposit of the goods in any part of the section or depot; if the case agreed upon, shows facts which, in legal effect, do amount to notice or dispense with it, then this statement that no notice was given, must be construed to mean that no actual or formal notice was given orally or in writing. And if the facts stated dispense with actual notice, or show that, in legal effect, notice was given, then this objection is met and removed.

Now I insist, and with great confidence, that under the arrangement existing between the two companies, and their usual and regular way of doing this kind of business, the *very presence* of the goods placed, as they had been by its own employés under its own control, in that precise locality in the section devoted to goods coming in over the defendant's road, destined for transportation over the Central, and marked as these kegs of nails were, for "P. & F., St. Louis," (see bill of lading, also

declaration, pp. 4 and 5,) was, *ipso facto*, notice of their arrival and of their delivery in that particular place, for that particular purpose; and that by agreement and usage between the two companies all other notice was dispensed with, this being *the* notice agreed upon to cast the duty of all further action upon the Central Company.

Accordingly, as I understand the case, it was the practice and course of business under this arrangement (and no other practice or course of business is shown), for the freight agent of the Central Company, when the freight was so deposited for transportation over that road, to call upon the freight agent of the defendant's road, who seems to have been in the same building, and from the way-bill in his hands, learn the ultimate destination (which in this instance sufficiently appeared upon the kegs), with the amount of freight charges, and have a way-bill made out by his company, etc. (Record, p. 8, 1st paragraph). This was "the practice." (*ib.*, paragraph 3.)

Such being the arrangement, the course of business and practice, the duty devolved upon the Central Company, through its agent, when the goods were so deposited, to make this inquiry, to use the ordinary and established means of obtaining the information. And the defendant's company was relieved from the duty of giving other notice of the arrival or delivery of the goods, than their visible presence in the proper place for being loaded on the Central cars. And it would have been contrary to the practice and established mode of doing the business, and therefore not the duty of the defendant's company for its agent, to call upon the agent of the Central Company to notify him of the delivery and request him to take the proper memoranda from the bill of lading or the way-bill. The agent of the Central might well reply: "When I want the information I will call for it in the usual manner; when my cars are ready I will be prepared to ship the freight, and I will then call for the information necessary to accompany it; till then your papers and your information will be of no use to me."

The fact that the agent was to get the information from the agent of the defendant, is of no more significance, and no more affects the question of delivery than if, by the arrangement, he was to get it from any other person agreed upon, or from any particular box or drawer about the depot, where the same papers were to be deposited. The information had reference only to the future management and direction of the goods and the charges to be collected, and not to any matter whatever connected with or affecting the delivery, which had already been made, nor with anything remaining to be done by the defendant's company, with or respecting the goods, their movement, custody, or control. Its custody and control had ceased. Certainly it was for the Central Company to load the goods upon their own cars and to transport them; and the defendant had no more concern with the subsequent handling or loading of the goods than it had with the further transportation after they were put upon the Central cars. And, in legal effect, according to the settled mode of doing the business, they were as much and as clearly within the charge and control, and at the risk, of the Central Company, as they would have been if already loaded on its cars. If this was not a complete delivery, it must be because the property could not be considered as received for transportation by the Central Company until actually put upon its cars; and this would be simply preposterous.

When such was the settled mode of doing business between these companies, can it be contended that, if the Central Company did not find it convenient, for lack of cars, or other cause, to load or send off the property for three or four days,—a delay occurring only to meet its own convenience,—it was still to be considered as in the custody and at the risk of the defendant's company, and that the Central Company never had it in its custody in the depot at all? And all this simply because it did not call on the defendant's agent for the information for which he had a right at any moment to call, and

for which it was his duty to call; and the delay was for the accommodation of his own road.

Do not let us confuse ourselves because this question of delivery happens to arise between two railroad companies. The question would have been exactly the same, and involved the same principles, if a merchant of Detroit had sent goods to the Central depot to be shipped over its road, and the like arrangement had existed as to the mode of doing the business.

If, under the admitted facts of this case, the placing of goods at the particular place designated and agreed upon by both companies, for goods brought by the Grand Trunk Company, and destined for transportation over the Central road, according to the settled mode of doing business between them, the law does not recognize this as a good delivery to, and acceptance by, the Central Company, it must be because it will not recognize this simple, honest and convenient mode of doing business, nor the plain principles of common sense and fair dealing in this particular branch of the commercial law; but requires the necromancy of some dry, unmeaning technicality, to constitute a good delivery to a carrier.

I have thus, as is my habit, argued this point upon principle, endeavoring to show what the law *must be*, careless of the question whether any decision has ever been made upon the precise point presented by the peculiar facts of this case; well knowing that if any decisions have been made contrary to this principle, they cannot be law; and equally well knowing that this court is not composed of mere machine or case lawyers, who think nothing can be law which has not been affirmatively and literally decided before upon precisely the same state of facts, but of jurists capable of recognizing the real principles which underlie and constitute the law applicable to these peculiar facts, though no decision upon the same state of facts was ever made before,—a court as capable of applying those principles and of establishing precedents based upon them as any court which has gone before them. To cite and

analyze all the cases which may be found in the books, before a court so familiar with the principles involved, would be scarcely respectful to the court. But the principle for which I contend,—that here was a good delivery without formal or actual verbal or written notice; and that the presence of the goods in the particular place, was of itself notice to the Central Company,—will be found fully recognized, demonstrated, and applied in *Meriam v. Hartford and New Haven Railway Company, 20 Conn., 354,* and in *Converse v. Norwich and N. Y. Tr. Co., 33 Conn., 166;* in neither of which are the facts so strong and clear in support of a delivery as in this case. I am not aware of any decided case in any respectable court which tends, when properly considered, to controvert the result which I have reached. Dicta of that character I presume, may be found scattered through the books, as they may be found in support of, or in opposition to, any proposition.

I shall not go over the cases in which such dicta may be found. The case of *Packard v. Getman, 6 Conn., 757,* has often been cited to show that though goods have been left in the proper place for shipment, notice must also be given. That case was properly decided, and without the aid of any such general principle, and the case when examined will be found to be no authority for such general principle in a case like the present. The conduct and statements of the owner misled the captain, and properly estopped the owner from claiming that the property was there.

If I have succeeded in establishing the first proposition of the Judge's charge, and the first of my argument, it disposes of this case; and the judgment must be affirmed, whether the Judge was right or wrong in the view he took of the effect of the bill of lading in exempting the property from this loss by fire.

But, upon the hypothesis—which I must, for the argument of the case, treat as possible,—that your Honors may differ with me on the first point, and hold that there was not a complete delivery, I proceed to consider the case further.

Before coming, however, to the second point of the Judge's charge, I desire to say that, upon what is, perhaps, or was not long since, the weight of authority outside of this court,—if the number of cases constitute the weight of authority,—another point might be taken which would be fatal to the case of the plaintiffs here, though the Judge had been wrong upon both the points which he charged. I allude to that class of cases which hold that, at common law, and independent of any statute, usage or agreement, a Railroad Company which has transported property over its road and deposited it in its depot to await delivery to the consignee, or to a succeeding carrier for further transportation, is no longer liable as a common carrier, but only as a warehouseman.

But this Court have so clearly and emphatically repudiated this proposition upon broad grounds of commercial law, as inconsistent with the duties which attach to the employment (*Mich. Central R. R. Co. v. Mineral Springs Manufacturing Co., 16 Wallace*), that I refrain from urging this point; and I refrain the more readily, because candor compels me to say, that I think the rule established upon this point by this court is clearly right in principle, and that it rests upon broad and solid grounds of public policy. I concurred in this view in *McMillan v. R. R. Co., 16 Mich., 79*, where it first arose for decision in that State, and where the Court were equally divided; and again, in *Buckley v. Great Western R. R. Co., 18 Mich.*, where, by a majority, that Court established the rule in exact accordance with the rule since so firmly fixed by this Court; and so stands the law in that Court to-day.

I come now to consider the second point, viz.: Whether the stipulations or provisions of the bill of lading relieved the defendant from liability for this loss by fire, which is admitted to have occurred without its fault or negligence.

1st. That the bill of lading constitutes the contract of carriage between the shipper or consignee and the carrier; and that the rights and duties of the respective parties upon all matters upon which it speaks, and which are not illegal or unreasonable in themselves, has been so often and so well settled by the decisions of this court, that it will not be successfully controverted here. It is sufficient to refer to the following: *Star of Hope, 16 Wallace, 651; R. R. Co. v. Androscoggin Mills, 22 Wallace, 594; The Thames, 14 Wallace, 98,* where it is assumed by the court as the basis of its reasoning—and it would be idle to multiply authorities which must be familiar to the court. But see, generally, *1 Pars. Mar. law, 177,* and cases cited; *Pope v. Nickerson, 3 Story, 465–473.*

2d. The same cases and many others, from *New Jersey Steam Navigation Company v. Bank, 6 Howard, 344,* down to this time, show that it is competent for common carriers to stipulate in the bill of lading, or way-bill, or contract of carriage, as the case may be, against loss by fire or any other kind of damage or loss not caused by the fault or negligence of the carrrier, and for which, without such contract, they would be held liable as common carriers. It would be idle to cite further authorities upon a point so entirely familiar to, and so often before this court.

3d. The first paragraph of the bill of lading exempts the carriers to whom it applies from loss by "fire at sea or on shore;" and the third declares that "no damage that can be insured against will be paid for." That these exemptions are not unreasonable (as applied to a case where the carrier has been without fault or negligence), within the meaning of the court, in *R. R. Co. v. Lockwood, 17 Wallace, 357,* is sufficiently apparent from the subsequent case of *R. R. Co. v. Androscoggin Mills, 22 Wallace, 594.*

II.

IT REMAINS ONLY TO SHOW THAT THE EXEMPTIONS ABOVE REFERRED TO IN THE BILL OF LADING APPLIED TO THE TRANSPORTATION BY THE GRAND TRUNK RAILROAD COMPANY AS WELL AS TO THE STEAMSHIP COMPANY, BY WHOM THE BILL OF LADING WAS GIVEN; AND THIS, I MAINTAIN, IS CLEARLY SHOWN BY APPLYING THE BILL TO, AND READING IT IN THE LIGHT OF, THE TRANSACTION OR STATE OF FACTS, AS WELL AS OF LAW, WITH REFERENCE TO WHICH IT WAS ISSUED, AND AS APPLIED TO WHICH THE PARTIES MUST NATURALLY HAVE UNDERSTOOD IT.

What, then, was that transaction or state of facts with reference to which the parties were contracting? These kegs of nails were purchased at Liverpool, in England, and were to be transported to St. Louis, in the State of Missouri. An ocean and half a continent intervened. A part of the way the carriage was to be by water; first over the open ocean to the mouth of the St. Lawrence river, and thence many hundred miles of internal navigation upon that river to Montreal, and thence by railroad. The Grand Trunk was the only railroad which could have taken them from that point for some distance west in the direction of St. Louis; and their road extended to the city of Detroit. Allan Brothers & Co. owned and were running a steamship line between Liverpool and Montreal; and this steamship company and this railroad company had then, and for several years before, and ever since have had a business connection and arrangement in the transportation business, by which each contracted for the transportation of goods by the other, destined to points on and beyond their respective lines; each receiving goods consigned over the line of the other to points on, as well as beyond their respective lines; delivering to the consignees in each instance a bill of lading similar to the one here in question. That is to say, a bill of lading fixing the amount of freight over both lines, so far as they are to be carried on either or both, and the terms of transportation; the goods be-

ing then carried by the party receiving them, to the place of connection with the other, viz.: Montreal, and there delivered to the other with a duplicate copy of the bill of lading, as was done here.

But neither of them having, so far as appears, any power to contract for the rate or amount of freight beyond the point where they were to be carried over the line of the other; that is, no arrangement with the lines connecting with the other beyond the point where they were to leave it; as in the present instance, the steamship line had no power to contract for the rate of freight over the roads beyond the terminus of the Grand Trunk, on the route from Detroit to St. Louis.

Such was the uniform mode of doing business by these two companies of carriers, and had been for years; and those shipping goods over the two lines were bound to take notice of the extent of the route of each of the two companies, and of their usual and settled mode of doing business. *Van Santvoord v. St. John, 6 Hill, 158; 2 Red. on Railways, 120.*

It is under such a state of facts, with such arrangements and uniform mode of doing business between the Steamship Company and the Railroad Company, that the agent of the plaintiffs applied to the former company at Liverpool for the transportation of these goods; agreed upon the rate and amount of freight over the entire line of each company, and took this bill of lading fixing the freight over the entire line of both from Liverpool to Detroit. It was therefore one contract of carriage from Liverpool to Detroit; and that contract was the bill of lading. It was with a duplicate of this bill of lading that the goods were received by the defendant at Montreal, and this accompanied them to Detroit, according to the long and well settled mode of doing this kind of transportation business between the Steamship Company and this defendant.

The agreed case shows that the property was received by the defendant with this bill of lading, which accompanied the

property to Detroit. And what is particularly significant upon this point is, that the plaintiffs themselves put in evidence this fact of the delivery of the bill of lading with the property, to the defendant at Montreal, and that it accompanied the goods to Detroit. This is one of the facts stated as a part of the plaintiff's case (Record, p. 6, point 2d), and it stands upon the same ground as if the bill and the fact of such delivery to the defendant with the goods, and its accompanying the goods to Detroit, had been introduced and proved by the plaintiffs, after which the plaintiffs can hardly claim that the defendant did not receive and transport the goods under the terms of this bill of lading, so far as those terms are not expressly or by their very nature clearly confined to their transportation on shipboard.

Now, this being a contract for the transportation of these goods over the entire route from Liverpool to Detroit, at least, partly by water on the ocean, partly by the same vessel on the river, and part of the way by rail on land, and an exemption from loss by fire being just as reasonable and as applicable to the one part of the route as to the other; while a distinction might be made by express words, applying one rule to one part of the route and another to another, "we should not (in the language of this Court in *Railroad v. Androscoggin Mills*) expect to find such provisions in such a contract, and we should require them to be clearly expressed."

Now the provision in the bill of lading exempting the carriers from liability for loss "by fire at sea or on shore," must be admitted to be just as germane and appropriate to carriage by land as by water, and to stand upon the same reasons as to both; and when the contract is for the carriage over an entire route, including both kinds of carriage, we should expect to have it applied to both, and it must be so applied unless the contrary intention is very clear. It is true, that by the mere grammatical construction, this clause may seem to apply only to losses which might occur before the delivery of the goods to

the Grand Trunk Company. But when we consider the exceedingly loose, untechnical, and inartificial manner in which mercantile contracts of this kind are generally drawn, it is obvious we must, to get at the real intention of the parties, pay much more attention to the substance, nature, and apparent reason of the provision, than to its grammatical arrangement or construction. By sticking merely to the grammar we stick in the bark. I submit, therefore, that when the substance and reason of the provision are looked to, it is deserving of serious consideration whether the phrase in question should not be applied, as well to that part of the route upon land, as that upon the water. The books are full of cases showing the liberality with which courts have construed various provisions, words, and phrases, in these informal mercantile contracts. I shall not detain the court by citing more than one or two of them, as samples. In *De Rothschilds v. Royal Mail Steam Packet Company, 7 Exch., 734,* where the bill of lading, as here, covered also land carriage, it was held that the words "damages of the roads," applied as well to marine roads at which vessels lie at anchor, as to roads on land, by the overturning of carriages, etc. And so in *Converse v. Norwich and N. Y. Transportation Company, 33 Conn., 166,* where the terms "bound for" a certain place, by grammatical construction applied only to the vessel, were held to apply only to the goods. With these preliminary remarks upon this clause, I cannot do better than to call your attention to the reasoning of the able judge, now deceased, who tried this cause.—*Record, pp. 10 to 13.*

It may be that the particular context in which this phrase is found may, in the opinion of this Court, confine its scope to such losses only as should occur prior to the reception of the property by the Grand Trunk Company. And possibly the Judge spent his principal efforts upon the least certain of the two clauses of exemption as applied to the particular stage of transportation which this property had reached; probably be-

cause the other provision for exemption, to which he barely refers, seemed to him so manifestly to apply to, and exempt from this liability as to require no comment from him.

But before coming to that provision I wish to call the attention of the Court to what seems to me to be the true explanation of the reason why so many of the clauses in the bill of lading expressly exempt the vessel or its owners under certain contingencies or from certain liabilities which might, with great propriety and parity of reasoning, have been made expressly applicable to the Railroad Company. This bill of lading was drawn and given in *England*, for the transportation to Detroit, at least, the whole of this part of the route, with the exception of an insignificant portion, being in British territory, or where the British law would apply.

By the English law,—directly the reverse of our own in this respect,—where property is delivered to one carrier marked or receipted for as destined to a point beyond its own line, and which, to reach such destination, must pass over its own line and thence by other lines, whether by rail or by vessels, whether the first line receiving the property has any business connection or not with any of the succeeding lines, the first carrier is held to have contracted for the entire route, unless there be something in the bill of lading, receipt or contract, or in the surrounding circumstances clearly showing the opposite intent. I need cite no authority to this, as the fact is familiar to the Court, having been more than once commented upon here.

Under this rule, with reference to which unquestionably the bill of lading was drawn, it was a contract of the steamship company for transportation from Liverpool to Detroit, at least, to which point the freight was fixed, if not the entire distance to St. Louis. And that company might have been sued for any loss or injury occurring upon any part of the route, as well when the property was in charge of the railroad company as when in that of the steamship company.

Not only this, but if an action had been brought any where in British territory for a loss or injury by the railroad company or any subsequent railroad over which the vessel company should be held to have contracted for the transportation, it could only have been brought against the steamship company with whom the contract was made. *Mytton v. Midland R. W. Co., 4 H. & N., 615; Collins v. Bristol & Exeter R. W. Co., 36 Eng. L. and Eq. R. 482; 5 Jarist N. S., 1367; 7 House of Lords, case 194; Redf. on Railways, 99, 101.* And in the case cited from *36 Eng. L. and Eq. R.*, the exemptions in the receipt note or bill of lading, against loss by fire, was held to apply to the second road as well as the first, though the language of the exemptions was confined to the first, as some of the exemptions in the present bill are to the vessel or vessel owners.

Being made with reference to this law, it is readily seen that, in order to apply the exemptions as well to the railway company as to the steamship company, it was only necessary to provide that the ship or the steamship company should not be liable in certain contingencies, and these provisions in the bill are to be understood in the same manner as if expressly made applicable to the railroad company, as the legal effect was supposed to be the same. And, if it is an entire contract to Detroit it must be the same. I here refer to such clauses in the bill as the following: "The owners of the vessel are not answerable for any discrepancy between the contents of the packages and the description of the same in the bill of lading," "nor will they be accountable for gold, silver, etc., unless," etc.; "It is expressly agreed as the only condition on which glass will be carried, that the steamer shall not be held liable for breakage," etc.; "The ship is not answerable for damages arising through insufficiency of strength of packages." All these provisions, under the law with reference to which they were made, should be read as if expressly made applicable to the entire route contracted for, whatever that may be, upon

land as well as upon water, as such must, in all probability, have been the understanding and intent of these clauses in the bill; and these remarks have also a strong bearing upon the clauses in the bill upon which I principally rely, especially upon that in reference to damages which might be insured against.

But, as if purposely to provide for every contingency for the entire route as well by land as by water, the phraseology is completely changed, made general and not confined to the vessel, in making some of the more important general provisions affecting the questions of exemption. Thus, the bill declares generally. "weight, contents, and value unknown, and not answerable for leakage, breakage, or rust." And again,—and this is the important provision upon which the defendant relies,—"No damage that can be insured against will be paid for, nor will any claim whatever be admitted unless the same is pointed out before the goods are removed." No language could be more general and at the same time explicit, applying to every species of damage on any part of the route by land or water, provided it should be of such a character that it could be insured against. It cannot be denied that fire could be insured against by the owner. And this fire having occurred without the negligence or fault of the carrier, it is clear the carrier was intended to be exempt from its risk. The nature and object of the exemption render it just as appropriate and just as reasonable and necessary in favor of the carrier by land as the carrier by water. And it would be strange and unnatural indeed, in a contract for one entire route, covering as well its transportation by this railroad company upon land as by the vessel owners upon water, if these vessel owners,—connected in business as they were with this railroad company, and contracting for both, and their mutual benefit, and, without this exemption, themselves liable for all loss by fire occurring while the property should be in charge of the railroad,—should designedly confine the operation of this exemption to that part of the route which was by water.

It is immaterial to inquire here whether this bill of lading was understood to constitute a contract with the steamship company beyond the termination of the Grand Trunk Road at Detroit, all the way to St. Louis, so as to hold the steamship company liable for losses occurring upon the latter portion of the route. If such was the intention, then I think it was equally the intention that the exemption from all damages which might be insured against, should also extend over the whole distance. And so, it is clear, the English courts would have held, if they held it to be a contract for the entire route to St. Louis. But as the freight was only agreed upon to Detroit, the obligation upon the steamhip company could only be to see that the property should be sent through from that point for the usual charges of freight. As far as Detroit, at least, this was an entire contract, as well by the American, as by the English law. By the bill itself, it was to be sent forward from Montreal by this raiload company, whose terminus in the direction of St. Louis, was at Detroit; the freight was agreed upon to Detroit. There was a business arrangement between this railroad company and the steamship company for the transportation over both lines, with the right of each to fix the freight over the other, and over both as one line; and this was done in the present case. And tnese facts would have made the bill of lading an entire contract by the steamship compauy for the entire distance to Detroit, according to all the American authorities. *Redfield on Carriers (2d vol. Redf. on Railways) ed. of 1867, p. 23,* and authorities there cited. *Railroad v. Androscoggin Mills, 22 Wallace 594; R. R. Co. v. Pratt, id. 123.*

And it can make no difference here, that such a contract made in this country would have been treated as an entire contract only to Detroit, and by the English law, where it was made, an entire contract to St. Louis. The exemption, if intended to apply all the way to St. Louis, must have been intended to be good as far as Detroit, up to which point the laws of both countries, on this particular question, correspond.

I am bound, however, in candor, to say, that to me it seems quite clear that the intention was to make this bill of lading conform throughout to the law as settled by the English decisions, under which I think this would have been held to be a contract of the vessel company for transportation over the entire route from Liverpool to St. Louis: and if so, then clearly, under the same decisions, the various provisions I have cited, that the vessel owners or the vessel should not be liable, etc., as well as against liability for any damages which might be insured against, would apply to the entire route, had an action been brought,—as in British territory it could only be brought,—against the steamship company making the original contract.

But this law might not be fully enforcible through the entire route here under certain circumstances, and subsequent companies receiving the property for transportation might be sued for loss or injury occurring on their several roads.

The property was received by the defendant under this bill of lading, and in British territory; yet, after its arrival at Detroit, to which point the contract was good and entire under both English and American law, the reception of it for transportation by each successive company, occurring, as it would, in our territory, might of itself create a different contract, or impose a different obligation from that created by the foreign contract contained in the bill of lading, and render the exemption in that bill of no avail under our laws. And this, doubtless, would be the effect, if the bill of lading should not accompany the property into the hands of those subsequent companies, and the property should not therefore be received under its terms. But this question need not be discussed, as it does not arise in this case.

In conclusion, I submit that this case, so far as it depends upon the exemption stipulated in the bill of lading, falls completely within the reasoning and the principles adopted by the court in *R. V. Co. v. Androscoggin Mills, 22 Wallace, 594.*

While the provisions are not in form identical, they are very similar, and the surrounding facts and circumstances with reference to which they are to be understood, are more numerous and stronger, in my estimation, in the present case, for extending the exemption over the entire route covered by the contract, and over which the freight was agreed upon.

The facts found and agreed upon by the parties leave the case to be decided by the court upon the questions of law arising upon those facts; and upon a true construction of the whole case, as stated, there is nothing tending to show a state of facts from which the jury, under any proper charge of the court, could have held the defendant liable.

The judgment, I submit, should be affirmed.

J. P. Christiancy
Atty for Deft in Error